No. 91-877

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1991

ERNST & YOUNG,

Petitioner,

v.

BOB REVES, ROBERT H. GIBBS, and FRANCES GRAHAM, As Representatives of a Class of Note Holders,

Respondents.

BRIEF OF THE CLASS IN OPPOSITION TO ERNST & YOUNG'S PETITION FOR A WRIT OF CERTIORARI

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STATEMENT OF THE CASE

This Statement of the Case will supplement the Eighth Circuit's detailed factual analysis (EY Pet. App. at 6a-27a[1]) and address the most important aspects of Arthur Young's fraud. It will explain the facts that led the jury in this case to conclude that Arthur Young originated the securities fraud here by straying far from its role as auditor and falsely portraying a farmer's cooperative as solvent to investors.

The Co-op

The Farmer's Cooperative of Arkansas and Oklahoma, Inc. (the "Co-op"), an organization of local farmers, raised almost all of its operating funds by

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[1] This response will cite to Ernst & Young's Petition as "EY Pet." and the Appendix to that petition as "EY Pet. App.".

selling promissory notes to its 23,000 members, all of whom were solicited regularly, and some other local persons. These notes were uncollateralized, uninsured, and payable on demand. The Co-op marketed its notes as an "Investment Program" and told investors that "YOUR CO-OP has more than $11,000,000 in assets to stand behind your investments."

The note program was started in 1959 by Jack White, who served as the Co-op's general manager for many years. The Co-op sold many millions of dollars of demand notes; at the time the Co-op declared bankruptcy in February 1984, over 1600 persons held notes they had purchased for nearly $10 million.

The Gasohol Plant

The Co-op's gasohol plant lies at the center of Arthur Young's fraudulent scheme. Jack White -- before he was jailed

for tax fraud involving self-dealing transactions with the Co-op -- had owned a gasohol plant. When it became apparent that the plant was a white elephant, he sold it to the Co-op by means of a "friendly" lawsuit. As a result of White's self-dealing, the Co-op was rendered insolvent.

Arthur Young's 1981 Audit

A partner in the accounting firm Russell Brown & Co. (which later merged into Arthur Young) testified on Jack White's behalf at his criminal trial. In 1981, while White's conviction was on appeal, White hired Arthur Young to prepare the Co-op's 1981 audit.

Prior to Arthur Young's engagement, the gasohol plant had not been included on the Co-op's financial statements. Arthur Young soon realized that properly-prepared financial statements

would disclose that the Co-op was insolvent and that White had taken advantage of the Co-op. In that event, as Arthur Young also recognized, there would be a run on the Co-op: many noteholders would seek to redeem their notes, no new ones would be sold, and the Co-op would become bankrupt. If that happened, Arthur Young would lose its biggest local account, and Arthur Young's prior testimony on White's behalf would appear suspect.

After consulting with White, Arthur Young began to construct a series of fictions (contrary to accepted accounting standards) that permitted it to create financial statements concealing the Co-op's insolvency. The key fiction was that the Co-op always owned the gasohol plant and that Jack White never did. As the district court stated:

> [T]he jury found on substantial evidence that Arthur Young originated the fraud, and we may say that it was rather obvious that Arthur Young "struggled hard" to make the Co-op appear solvent, against all available data and any reasonable characterization of it.

Arthur Young never revealed these fictions to the Co-op's Board of Directors ("Board"), the Co-op's financial officer, or to anyone else.

After the Board adopted Arthur Young's false financial statements for 1981, the Co-op continued to sell demand notes to its members and others. Arthur Young knew that the Co-op offered the notes for sale every month in its widely-circulated newsletter, representing that the Co-op had sufficient assets to enable it to redeem the notes on demand.

The Co-op's 1982 Annual Meeting

Prior to the 1982 annual meeting of its members, the Co-op prepared a

summary statement of its financial condition by condensing the false statements Arthur Young had prepared. Those condensed statements were reviewed and approved by Arthur Young and then included in the Co-op's Notice Of Annual Meeting. Like the full statements, the condensed ones concealed the Co-op's insolvency. Arthur Young attended the annual meeting and used the condensed statements to report on the Co-op's financial condition. Arthur Young did not tell the attendees (who asked many questions of Arthur Young about the gasohol plant and the condensed financial statements) that the Co-op was insolvent. Nor did Arthur Young advise them that it believed the condensed statements to be misleading. The press, which reported on the meeting to members and to others in the local community, was unable (due to Arthur

Young's fraud) to accurately report on the Co-op's financial condition.

Arthur Young's 1982 Audit

After the 1982 annual meeting, Arthur Young continued its pattern of deception. It maintained an office at the Co-op, working there regularly. Arthur Young observed that the Co-op's financial condition had grown even weaker. Nevertheless, in the early 1983, Arthur Young completed its preparation of a new set of financial statements. These, too, assumed that White never owned the gasohol plant and thus concealed the Co-op's insolvency.

The Co-op's 1983 Annual Meeting

As in the prior year, Arthur Young reviewed and approved the Co-op's false condensed statements, which accompanied the Notice of Annual Meeting. Arthur Young appeared at the 1983 annual meeting to

report on the Co-op's financial condition. Arthur Young again failed to disclose to the members in attendance that both the full and the condensed statements concealed the Co-op's insolvency.

Arthur Young And The Class

Throughout this period, the Co-op continued to sell demand notes as investments to its members and other local persons. No purchasers, members, or directors were informed by Arthur Young that the Co-op was insolvent. On numerous occasions, Arthur Young should have told the truth -- in its full financial statements, during its meetings with the Board, in the condensed statements, during its presentations at the annual meetings -- but it never did. As a result, between the date of Arthur Young's first false financial statement and the date of the Co-op's voluntary filing for bankruptcy,

Co-op members and others in the area purchased over $6 million of demand notes from an enterprise that Arthur Young knew to be insolvent.

These note purchasers are the members of the Class. The most basic common sense holds that none of them would have purchased a demand note had they known that Arthur Young had concluded that the Co-op was insolvent. They made their purchases only because Arthur Young consistently disseminated financial information, both directly and through the Co-op, that concealed the Co-op's insolvency (as well as numerous other facts that the courts below found material). Had Arthur Young ever told the truth, the news that the Co-op was insolvent would have spread quickly through the membership.

The Co-op's Bankruptcy

Arthur Young's fraud began to come apart after the Arkansas and federal governments looked into the Co-op's financial condition and asked Arthur Young to stand by the financial statements it had prepared. Arthur Young responded with a vague letter. When the Arkansas Securities Department began to press its view that the notes were securities, Arthur Young resigned. Within the next few months, as the Co-op's true financial picture began to emerge, many notes were redeemed and few were purchased. When the demand note balance fell below $9.5 million, Farmland (the major creditor and supplier of the Co-op) refused to extend any more trade credit to it. The Co-op then made a voluntary filing for bankruptcy. No demand notes were sold after that filing.

The Proceedings Below

In 1987, after a four-week trial, a jury found that Arthur Young had intentionally violated the anti-fraud provisions of both the Arkansas and federal securities laws by originating the fraud.[2] Thus, Arthur Young became liable to the Class under both federal and state law judgments (although the damages overlap).

Arthur Young appealed from the adverse judgments against it. One its many arguments was that the Co-op's demand notes were not securities under state or federal law. The Eighth Circuit accepted Arthur Young's view and reversed, without deciding

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[2] The Class also asserted a RICO claim against Arthur Young, predicated on Arthur Young's acts of securities fraud. The district court entered summary judgment against that claim, and the court of appeals affirmed. The RICO claim is the subject of the Class' separate petition for a writ of certiorari. (See infra note 3.)

any other issue. The Class, supported by the SEC and the Arkansas Securities Department, brought the securities issue before this Court. In Reves v. Ernst & Young, 494 U.S. 56 (1990), this Court rejected the Eighth Circuit's test for notes and held that the Co-op notes are securities.

On remand, the Eighth Circuit decided the many appellate issues in an opinion so comprehensive that it has a table of contents. The Court carefully considered each argument of the parties and (while remanding for a recalculation of damages) affirmed both the federal and state securities law judgments against Arthur Young.

SUMMARY OF ARGUMENT

Arthur Young presents no special or important reason why this Court should review the securities law rulings of the Eighth Circuit. There is no conflict among the circuits here; nor did the Eighth Circuit fail to follow state or Supreme Court precedent. Thus, there is no reason to disturb the securities law decisions of the jury, the district court, and the Eighth Circuit.

Moreover, while the factual issues on the securities claims are complex, the legal issues are not. First, the Eighth Circuit applied settled law in affirming the district court's ruling that the Class' Rule 10b-5 claim was entitled to a rebuttable presumption of reliance under the rule of Affiliated Ute. Arthur Young contends that the Eighth Circuit (as well as the district court) "seriously

misconstrued" the applicable precedent and thus applied it incorrectly to the particular facts of this case. (EY Pet. at 12.) This claim -- which in any event is mistaken -- is not a sufficient reason for this Court to grant the petition.

Second, Arthur Young asks this Court to take the extraordinary measure of reviewing the Eighth Circuit's interpretation of Arkansas law. Arthur Young does so because it violated both the federal and state securities laws, and thus a victory on the federal securities law judgment, by itself, would not erase Arthur Young's liability to the Class. There simply is no basis for Arthur Young's contention that the Eighth Circuit went awry; indeed, it is apparent from the opinion below that the Eighth Circuit carefully analyzed the many arguments

presented to it and reached rational and just decisions.[3]

I. THE EIGHTH CIRCUIT CORRECTLY APPLIED THE RULE OF AFFILIATED UTE.

A. The Eighth Circuit's Decision

Arthur Young disputes the Eighth Circuit's ruling on only one element of the Class' Rule 10b-5 claim -- reliance -- which the appellate court (and Arthur Young below) called "transaction causation." See also Harris v. Union Electric Co., 787 F.2d 355, 366 (8th Cir.), cert. denied, 479 U.S. 823 (1986). That element requires proof

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[3] The Class holds the same view even in the context of its own petition for a writ of certiorari. While the Eighth Circuit affirmed the summary judgment against the Class' RICO claim, it candidly explained that it was bound to follow the precedent of the court of appeals en banc "until the Supreme Court rejects our standard." (EY Pet. App. at 30a.)

that "the allegedly fraudulent acts caused the plaintiff to purchase the securities." (EY Pet. App. at 39a-40a.)[4]

The Eighth Circuit held that under Affiliated Ute and its progeny, the Class was entitled to a rebuttable presumption of transaction causation because (a) the claim was based primarily on Arthur Young's nondisclosures (rather than affirmative misrepresentations) and (b) Arthur Young

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[4] Transaction causation is the more appropriate term here. In this case and others in which the fraud consists primarily of omissions and nondisclosures, it is awkward to say that a plaintiff "relied" on those omissions and nondisclosures in buying securities. See Latigo Ventures v. Laventhol & Horwath, 876 F.2d 1322, 1326 (7th Cir. 1989). It makes more sense to say that omissions and nondisclosures "caused" a plaintiff to enter into an investment transaction, or put another way, a plaintiff who knew the omitted or nondisclosed information -- such as the Coop's insolvency -- would not have purchased the securities.

owed the Class a duty to tell the truth about the Co-op's financial health.

1. Nondisclosure

The Eighth Circuit, affirming the decision of the district court, ruled that the "facts and pleadings" demonstrated that the Class' claim was principally one of nondisclosure. The Eighth Circuit recognized that Arthur Young knew early on in this case that the Class intended to rely on a nondisclosure-based rebuttable presumption, and that it nevertheless made no effort to rebut that presumption (even though it had deposed numerous Class members). The Eighth Circuit concluded that "[f]or Arthur Young to argue now that it was entitled to judgment as a matter of law because the Class did not show transaction causation is a bold move indeed." (EY Pet. App. at 43a (footnote omitted).)

2. Duty To Disclose

As for the Arthur Young's duty to disclose, the court of appeals stated that whether this duty exists depends on the particular facts and circumstances of each case. The court then applied a seven-factor test to the facts here and concluded that Arthur Young owed the Class a duty to tell them about the fraud it originated and perpetuated.

The Eighth Circuit also dismissed Arthur Young's claim that it had no means to satisfy that duty as "preposterous":

> At the annual meetings Arthur Young could have said something, but simply chose not to. . . . Given the importance of the [many nondisclosures], the nature of the Co-op and the people who invested in it, the Co-op's location in a relatively rural area, and the interests of local news organizations in the Co-op's affairs, it seems sure that the Class would have heard what it now dearly wishes it had heard. Thus, Arthur Young could have satisfied its duty with perhaps two of the ten

> minutes it used to address the annual meetings in 1982 and 1983.

(Ey Pet. App. at 48a (footnote omitted and emphasis added).)

3. The Effect Of The Presumption

The decisions of both courts below on this issue are well-supported by the facts and law. The jury was able to presume that those who bought the Co-op's demand notes would not have invested had they known about Arthur Young's fraud, including the concealed insolvency of the Co-op. Thus, there was no basis in fact, law, or common sense for requiring over 1600 Class members to pour though a courtroom to say "had I known that the Co-op was insolvent, that there was something suspicious about the Co-op's acquisition of the gasohol plant, that the Co-op's auditors failed to follow proper accounting procedures, that the auditors

falsely treated the gasohol plant as if the Co-op always had owned it, and that without this fiction the Co-op would have a negative net worth, I would not have invested all or part of my life savings in demand notes." See, e.g., Mills v. Electric Auto-Lite Co., 396 U.S. 375, 382 n.5 (1970) ("proof of actual reliance by thousands of individuals would . . . not be feasible").

At trial, Arthur Young was given the opportunity to prove that even if it had told the truth at the annual meetings, followed proper accounting procedures, and the like, the Class members would have purchased demand notes anyway. Arthur Young deliberately chose not to rebut the presumption of transaction causation, apparently because there were no facts to support its position.

B. The Eighth Circuit Required The Class To Establish Reliance.

Arthur Young's assertions notwithstanding (EY Pet. at 11), the Eighth Circuit did not ignore the element of transaction causation/reliance.[5] The court merely held that under these particular facts, the Class has established that it was entitled to rely on a presumption of transaction causation, and Arthur Young had to present positive proof to rebut that presumption.

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[5] The commentator that Arthur Young relies on for the proposition that Affiliated Ute and other courts did away with reliance (Ey Pet. at 13 n.6), actually does not support this view. Rather, he asserts that Affiliated Ute replaced a "subjective reliance" test with a "constructive reliance" test. Arnold S. Jacobs, Litigation and Practice Under Rule 10b-5 § 62 n.27, at 3-254 (footnote omitted from EY quotation) and § 64.01[b][i], at 3-314-18 (2d Ed. 1991) ("Ute broadened constructive reliance so it covers all concealment cases").

Arthur Young states that Congress, in enacting section 10(b) of the 1934 Act, intended reliance to be an element of all securities fraud claims. (EY Pet. at 11-12.) But -- as Affiliated Ute itself demonstrates -- Congress never suggested that reliance could not, in certain cases, be presumed to exist subject to the introduction of contrary evidence.

C. The Eighth Circuit Correctly Interpreted Affiliated Ute.

Arthur Young's primary contention on the federal law issue is that the Eighth Circuit and the district court misunderstood Affiliated Ute and therefore misapplied it to these facts. (EY Pet. at 12.) That is not a sufficient reason for the Court to hear this case, and in any event, Arthur Young's argument is unfounded. Arthur Young's interpretation

of Affiliated Ute reads limitations into that decision that no court ever has found.

In Affiliated Ute, this Court held that under the circumstances presented there -- where the case primarily was based on nondisclosures and where the defendants had an obligation to disclose -- "positive proof of reliance is not a prerequisite to recovery." 406 U.S. at 153-54. This is exactly the test that the Eighth Circuit applied below: was this primarily a nondisclosure case, and did Arthur Young owe the Class a duty to disclose material facts. Answering both questions in the affirmative, the Eighth Circuit did not require the Class to present "positive proof" of reliance.

Contrary to Arthur Young's claim, nowhere in Affiliated Ute does the Court restrict the presumption to "reliance on omissions of particular facts" to the

exclusion of "reliance on the conduct of defendants." (See EY Pet. at 14.) Arthur Young asserts this limitation is implicit in "the immediately preceding nine pages of the Court's opinion" before the statement of the holding in Affiliated Ute. (Id. at 13-14.) This argument really is a complaint that the presumption of reliance was justified under the facts of Affiliated Ute but not under the facts here. The district court and the court of appeals below both disagreed with Arthur Young.

Arthur Young also claims that the Eighth Circuit relied on a particular passage from Affiliated Ute that it took out of context. (EY Pet. at 13.) This argument is plainly wrong. The Eighth Circuit's decision does not rely on any passage from Affiliated Ute or even cite to that case in its transaction causation analysis. Rather, the court relied on

several Eighth Circuit cases that follow Affiliated Ute and hold that "where the defendant's alleged conduct involves primarily a failure to disclose, the plaintiff need not prove transaction causation will be inferred [subject to rebuttal] if the withheld information is material." (EY Pet. App. at 41a.)

Thus, the Eighth Circuit correctly interpreted the rule in Affiliated Ute and decided, as in Affiliated Ute, the Co-op's auditors could not "stand mute while they facilitate" the fraudulent sale of securities to the Class members. See 406 U.S. at 153.

D. There Is No Conflict Among The Courts Of Appeals.

Arthur Young incorrectly states that there is a conflict among the courts of appeals as to what Affiliates Ute's

presumption of reliance means or when it may be applied. Arthur Young has not cited to any court or commentator that has perceived this alleged conflict. The cases Arthur Young relies on merely demonstrate that the courts of appeals have found that some cases met the Affiliated Ute test while other cases did not.

Arthur Young claims that the Eighth Circuit's decision, along with decisions of the Second, Ninth, and Tenth Circuits from 1975 and 1980, conflict with the Seventh Circuit's interpretation of Affiliated Ute in Latigo Ventures v. Laventhol & Horwath, 876 F.2d 1322 (7th Cir. 1989). (EY Pet. at 17-18.) Yet in Latigo Ventures, the Seventh Circuit did not discuss or attempt to explain Affiliated Ute, and did not disagree with or even cite to the supposedly conflicting

cases. See Latigo Ventures, 876 F.2d at 1326.

Nor did the Eighth Circuit detect any conflict among the circuits over the interpretation of Affiliated Ute. Indeed, the court expressly distinguished Latigo Ventures (and two other cases) because they posed a distinct legal issue and involved dissimilar factual settings:

> [The cases] all involve claims for aiding and abetting Rule 10b-5 violations against accounting firms that did not blow the whistle on their claims, as opposed to the primary Rule 10b-5 liability asserted here. Moreover, those cases feature vastly different factual circumstances and procedural postures.

(EY Pet. App. at 48a n.28.)

E. Summary Of Federal Law Issue

The Eighth Circuit's decision is entirely consistent with congressional intent, Affiliated Ute, and decisions of

other courts of appeals. Arthur Young's only complaint is that the Eighth Circuit reached the wrong result -- in spite of the overwhelming evidence that Arthur Young originated and perpetuated a fraud and, by its deceptions, caused over 1600 investors to purchase worthless securities. This Court should deny Arthur Young's writ on the federal securities law issue.

II. THERE IS NO BASIS FOR THE EXERCISE OF THIS COURT'S SUPERVISORY POWERS HERE.

Arthur Young's liability to the Class is founded on violations of both Rule 10b-5 and the Arkansas Securities Act, and thus, Arthur Young needs both judgments reversed in order to erase its liability. As for Arkansas law, the obstacle Arthur Young faces is that this Court is not the appropriate forum for review of lower federal courts' interpretations of state

statutes. See, e.g., Huddleston v. Dwyer, 322 U.S. 232, 237 (1944) ("[W]e accept and do not review, save in exceptional cases, the considered determination of questions of state law by the intermediate appellate courts." (citation omitted)).

Arthur Young therefore struggles to formulate a procedural issue in order to invoke this Court's supervisory powers. Arthur Young claims that it was unfairly surprised by the Eighth Circuit's allegedly incorrect interpretation of the Arkansas Securities Act. Arthur Young, however, misconstrues the court's decision and merely offers a different interpretation of Arkansas law.

In any event, this Court exercises its supervisory powers only rarely and cases involving serious problems with the administration of justice. Those types of circumstances are not present here.

Indeed, the Eighth Circuit's decision is remarkable for the thorough attention paid to the each of the many issues that were raised on appeal.

A. The Eighth Circuit's Decision

Mindful of this Court's decision in Salve Regina College v. Russell, 111 S. Ct. 1217 (1991), the Eighth Circuit reviewed de novo the district court's decision on the state securities law issue. The court also recognized -- as Arthur Young does not -- that it had to consider the evidence in the light most favorable to the Class, assume that the jury resolved all conflicts of evidence in favor of the Class, assume as true all facts which the Class' evidence tended to prove, and grant the Co-op the benefit of all favorable

inferences that reasonably may be drawn from the facts. (EY Pet. App. at 31a-32a.)

The Eighth Circuit, as the district court had, held that based on all the facts and reasonable inferences, Arthur Young properly was found liable under Ark. Code Ann. § 23-42-106(c), formerly codified as § 67-1256(b) ("section 106(c)").

The court of appeals explained that section 106(c) creates two kinds of secondary liability for securities fraud: control person liability and aiding and abetting liability. The court determined that aiding and abetting liability was more appropriate in light of the facts adduced at trial. (EY Pet. App. at 33a-34a.)

The Eighth Circuit then analyzed the jury instruction on the state securities law claim and concluded that it "fulfilled the requirements of section 106(c)":

> [T]he jury could only hold Arthur Young liable if it concluded that Arthur Young originated the untrue statements or omissions, knew that the statements were communicated to the Class, and knew that the Class would rely on them to purchase the demand notes; in other words, that Arthur Young "materially aided" in the sale of demand notes.

(EY Pet. App. at 36a.)

In fact, the court of appeals held that the district court's instruction set too high a threshold, in that it required the jury to find -- which it did -- that Arthur Young actually originated the securities fraud (and not just materially aided it). The court further held that "the trial evidence provides ample support" for the jury's decision that Arthur Young violated state law. (Id. at 36a-37a.)

B. The Eighth Circuit Made No Factual Findings.

Arthur Young's contention that the Eighth Circuit held it liable under section 106(c) by making an implicit factual finding that it was an "employee" of the Co-op is incorrect. Arthur Young concedes that "the court of appeals did not make an explicit finding" (EY Pet. at 28), and the opinion is bereft of any even an implied decision to that effect.

Arthur Young suggests that it is entitled to a remand to present additional evidence on its liability under Arkansas

law.[6] Yet Arthur Young does not explain what that evidence might be. It was apparent to the courts below that in the course of a four-week trial, the jury was presented with virtually every conceivable detail of Arthur Young's involvement with the Co-op and the demand note program. There are no new facts for Arthur Young to present.

Arthur Young already used the appropriate avenue for relief in this case: a petition for rehearing in the Eighth

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[6] Though Arthur Young also asks this Court for an outright reversal on this issue (EY Pet. at 30), there is no basis for this request. In order to reverse the Eighth Circuit's decision on the state law claim, this Court would have to reinterpret Arkansas securities law. But this Court "lack[s] jurisdiction authoritatively to construe state legislation." United States v. Thirty-Seven Photographs, 402 U.S. 363, 369 (1971) (citation omitted); accord Gooding v. Wilson, 405 U.S. 518, 520 (1972).

Circuit to convince the court to reconsider its interpretation of Arkansas law. The court of appeals denied that petition without dissent.

C. This Court Exercises Its Supervisory Powers Rarely And In Far Different Cases.

Because this Court rarely exercises its supervisory powers over the federal courts, the contours of those powers are not well defined. From the instances in which the Court has used these powers, though, it is plain that there is not a serious problem in the administration of justice that has implications beyond fates of the parties to each case.

For example, in Communist Party of the United States v. Subversive Activities Control Board, 351 U.S. 115 (1956), the Court used its supervisory powers to reverse the circuit court's decision

barring the introduction of additional evidence to show that witnesses had committed perjury at trial: "[F]astidious regard for the honor of the administration of justice requires the Court to make certain that the doing of justice be made so manifest that only irrational or perverse claims of its disregard can be asserted." Id. at 124 (emphasis added).

Other circumstances requiring supervisory action include striking down race-based restrictive covenants, Hurd v. Hodge, 334 U.S. 24, 34 (1948), excluding the introduction of confessions obtained through "flagrant disregard" of criminal justice procedures, McNabb v. United States, 318 U.S. 332, 340-47 (1943), ensuring that district court's attorney residency requirements are consistent with "principles of right and justice," Frazier v. Heebe, 482 U.S. 641, 645-46 (1987), and

preventing a lower court from appointing an interested party as prosecutor in a criminal contempt proceeding, Young v. United States, 481 U.S. 787, 802-09 (1987).

These cases all presented serious and fundamental problems in the administration of justice, with implications reaching far beyond the fates of the parties to each case. These circumstances are not present here. Put in the very best light for Arthur Young, the Eighth Circuit below affirmed a jury verdict and district court decision by interpreting a contested state statute incorrectly and in a manner that Arthur Young had not anticipated. Even if Arthur Young is correct -- and it is not -- the result below does not cause the "honor of the administration of justice" to be questioned. There is no basis for the

exercise of this Court's extraordinary powers of supervision here.

CONCLUSION

For all the reasons stated above, Arthur Young has not presented an issue that merits this Court's consideration, and Ernst & Young's petition for a writ of certiorari should be denied in its entirety.

Respectfully submitted,

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